

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2004-0210, State of New Hampshire v. John Parent, the court on November 3, 2005, issued the following order:

Following a jury trial, the defendant, John Parent, was convicted on three counts of simple assault, see RSA 631:2-a (1996), and one of criminal threatening, see RSA 631:4, I(d) (Supp. 2004). On appeal, he contends that the trial court erred in allowing the State to amend one of the simple assault complaints and in excluding the testimony of a prospective defense witness. We affirm in part, reverse in part, and remand.

On the day of jury selection, the State amended one of the simple assault complaints. The original complaint charged that the defendant committed unprivileged physical contact by grabbing the victim by the head and striking her head against a blunt object; in the amended complaint, the defendant was charged with grabbing the victim's neck with one of his hands. Citing State v. Greene, 137 N.H. 126 (1993), the defendant argues that because the specific contacts alleged in the original and amended complaints were "separate and distinct acts of assault," the amended complaint charged a new criminal act. In Greene, we distinguished between the means used to make contact and the actual site of contact, holding that the site was part of the element of contact. Id. at 128-31. Although Greene addressed the issue of jury unanimity, we have been presented with no rationale that would distinguish it from the case at hand. Given the current constraints of Greene and the fact that the statute of limitations had run on the charge in the amended complaint at the time that the State amended it, we are compelled to conclude that the trial court erred in permitting the amendment. Accordingly, we reverse the defendant's conviction on complaint No. 02-S-1704.

The defendant also argues that the trial court erred in ruling that the proposed testimony of a prospective defense witness would be irrelevant or, if relevant, cumulative. We review the trial court's decision on the admissibility of evidence under an unsustainable exercise of discretion standard. State v. Ainsworth, 151 N.H. 691, 694 (2005). The proposed testimony addressed whether the victim had lied about her alleged relationship with another man. It was not relevant to whether the defendant assaulted her. See N.H. R. Ev. 401. The defendant also argues that it was admissible under Rule 613 as a prior inconsistent statement. N.H. R. Ev. 613. In this case, however, the victim did

not deny making the alleged statement, but rather testified that she had no recollection of it. Accordingly, we find no error in the trial court's ruling.

Because we conclude that the trial court erred in permitting the State to amend complaint No. 02-S-1704, we reverse the defendant's conviction on that charge. We affirm the defendant's other convictions. Because the sentences imposed may have been affected by the conviction that we have reversed, we remand to permit the trial court to determine whether resentencing would be appropriate on the convictions that we have affirmed.

Affirmed in part; reversed in part and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox
Clerk